

Effective July 20, 1999, the Automobile Renting Occupation and Use Tax Act excludes from tax any receipts received by an automobile dealer from a manufacturer or service contract provider for reimbursement of that automobile dealer's cost in providing loaner automobiles. See Public Act 91-0193. (This is a GIL).

December 28, 1999

Dear Xxxxx:

This letter is in response to your letter dated August 30, 1999, your follow up letter dated October 29, 1999, and our latest telephone conversation of December 10, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your August 30, 1999 letter, you have stated and made inquiry as follows:

This letter and the information provided hereinbelow are respectfully submitted on behalf of my client, (hereinafter 'Client') an Illinois licensed and franchised new motor vehicle dealer within the definition of the Illinois Vehicle Code (625 ILCS 5/5-101) and is intended to seek a General Information Letter, to obtain general information pursuant to 2 Ill. Adm. Code 1200.120(b) and (c). Client offers to its customers who lease new motor vehicles of a specific automobile manufacturer's line, a service loaner at no charge to the customer during the lease period when the leased vehicle is being repaired under warranty. In short, the service loaner is provided to the customer when the vehicle he or she is leasing is repaired under the manufacturer's warranty. With respect to any money Client receives from the automobile manufacturer reimbursing Client pursuant to the manufacturer's warranty and the reimbursement is made to recover the costs of operating the vehicle as a service loaner, please confirm whether 'gross receipts' does not include receipts received by Client from the manufacturer for use of the service loaner by customer while customer's leased vehicle is being repaired by Client under manufacturer warranty, as provided for in 35 ILCS 155/2, as amended effective July 20, 1999, by Public Act 91-0193.

In the above, what if the daily rental rate on the service loaner provided to the customer at no charge is \$30.00, (with \$18.00 thereof reimbursed to Client by the automobile manufacturer consistent with 35 ILCS 155/2, as amended, and discussed above), and with \$12.00 thereof charged internally by Client. Please confirm whether the \$12.00 internal charge, which we are advised is charged by one internal department within the dealership to another, is not included in the

'gross receipts' for purposes of the Automobile Renting Tax. For purposes of clarity, please consider the following 2 examples:

A. Free Customer Loaner

- Assume \$30.00 per day rental
- \$18.00 manufacturer reimbursement to dealer per manufacturer's warranty to recover costs for loaner vehicle
- \$12.00 internal charge
- No money is tendered by customer

In the above scenario, what is the amount of ART tax the dealer would remit to the State of Illinois, if any?

B. Service Loaner - Benefit At Time of Customer's Lease of Vehicle

- Assume as part of the sale of the vehicle by dealer for lease by lessor/captive finance company dealership reduced its profit and established a reserve account for \$45.00
- Assume \$30.00 per day rental
- \$18.00 manufacturer reimbursement to dealer per manufacturer's warranty to recover costs for loaner vehicle
- \$12.00 internal charge

On what amount, if any, should ART tax be collected and remitted by dealer to State of Illinois?

Please confirm and advise with respect to the above at your earliest convenience. If you have any questions, feel free to contact my office, or you may feel free to fax my office, at the numbers herein set forth. Thank you for your consideration.

In your October 29, 1999 letter, you have stated and made inquiry as follows:

This letter and the information attached hereto is in furtherance of our telephone conversation this date and will supplement the correspondence to you from my office, dated August 30, 1999, respectfully submitted on behalf of my client, (hereinafter 'Dealer') an Illinois licensed and franchised new motor vehicle dealer within the definition of the Illinois Vehicle Code (625 ILCS 5/5-101) and is intended to seek a General Information Letter, to obtain general information pursuant to 2 Ill. Adm. Code 1200.120(b) and (c). Dealer has heretofore written to inquire about the tax implications of a program offered by COMPANY to its licensed, franchised new vehicle dealers, known as the Transportation Assistance Program I (hereinafter 'TAP'), which is intended by the manufacturer to support dealers' costs for a service loaner program. Dealer offers to its customers who have either leased or purchased from Dealer a new Ford motor vehicle, a service loaner at no charge to the customer during the

lease or ESP period when the customer's vehicle is being repaired. At the time of my August 30, 1999 correspondence, my office had not received any information disseminated by COMPANY as to the parameters of the TAP program.

However, since that time, my office has received the enclosed information regarding the TAP program which should serve to shed light on the nature of my inquiry; to wit: ***whether, in the wake of the promulgation by the State of Illinois of the recent amendment (P.A. 91-0193) to the Automobile Renting and Occupation Use Tax Act (35 ILCS 155/2) (effective July 20, 1999), 'gross receipts' includes payments received by an Illinois new motor vehicle dealer under the TAP program from COMPANY for the use of a motor vehicle by a customer while that customer's vehicle is being repaired by that motor vehicle dealer.*** In short, the service loaner is provided to the customer when his or her vehicle is being repaired by the dealership that is providing the service loaner, and the manufacturer's payment to the dealer supports the dealership's costs for the service loaner program.

In the following Example A, which represents a free service loaner (no charge to the customer) if the daily rental rate on the service loaner provided to the customer by the dealership at no charge is \$30.00, with \$18.00 thereof reimbursed to the dealership by the manufacturer to support the dealership's costs for said service loaner, what is the amount of the ART tax the dealer would remit to the State of Illinois, if any?

A. Free to Customer - Service Loaner

- Assume \$30.00 per day rental rate - no charge to customer
- \$18.00 manufacturer reimbursement to dealer to recover costs for loaner vehicle

In the following Example B, on what amount, if any, should ART tax be collected and remitted by dealer to State of Illinois?

B. Service Loaner - Benefit At Time of Customer's Lease of Vehicle

- Assume as part of the original sale price of the vehicle either to customer or to leasing company for subsequent lease to the customer an amount of \$45 is included or the dealership reduces its profit by \$45.00 and internally establishes a reserve account (\$45.00 per vehicle) to support its service loaner program.
- Assume \$30.00 per day rental rate
- \$18.00 manufacturer reimbursement to dealer per manufacturer's warranty to recover costs for loaner vehicle
- \$12.00 internal charge (by dealership Rental Department to another internal dealership department) to recover costs for loaner vehicle

I trust the enclosed supplemental information will be helpful. Again, thank you in advance for your consideration. If you have any questions, feel free to contact my office, or you may feel free to fax my office, at the numbers herein set forth.

Public Act 91-0193, effective July 20, 1999, amended the Automobile Renting Occupation and Use Tax Act to exclude:

"receipts received by an automobile dealer from a manufacturer or service contract provider for the use of an automobile by a person while that person's automobile is being repaired by that automobile dealer and the repair is made pursuant to a manufacturer's warranty or a service contract where a manufacturer or service contract provider reimburses that automobile dealer pursuant to a manufacturer's warranty or a service contract and the reimbursement is merely made to recover the costs of operating the automobile as a loaner vehicle."

With respect to Example A (August 30 letter):

If a manufacturer or service contract provider provides an automobile dealer with a reimbursement pursuant to a manufacturer's warranty or service contract merely for the costs of operating an automobile as a loaner vehicle for a person while that person's automobile is being repaired, the amount of that reimbursement is not subject to Automobile Renting Occupation and Use Tax. For example, if an automobile dealer receives such a reimbursement in an amount of \$18, the \$18 would not be subject to Automobile Renting Occupation and Use Tax.

If the dealer receives an amount as a payment or a reimbursement from any other source for the loaning/renting of the automobile, that amount would generally be subject to Automobile Renting Occupation and Use Tax. You indicated in our latest telephone conversation that the dealership obtains no payment or reimbursement from any source for the remainder of its costs in loaning/renting out the vehicle. If the dealer "charged" an amount on its books to a department or division within that dealership which represented the remainder of its costs in loaning/renting out the vehicle and that department or division was either not separately registered with the Department or not considered to be a separate legal entity from the dealership, then that charge would not be subject to tax.

With respect to Example B (August 30 letter):

The same general concepts set out above for Example A above will also apply to your Example B. A dealer who sets out or reserves a specified amount of funds, from the sales price of the vehicle, in a separate account on its books and records to track its costs associated with providing that customer with a loaner vehicle while the customer's vehicle is being repaired, will not subject those funds to Automobile Renting Occupation and Use Tax liability. Please note

that this is true only so long as the dealer makes no separate charge in addition to the sale price of the vehicle for the use of such a loaner vehicle.

With respect to Example A (October 29 letter):

Please see our answer to Example A from your earlier August 30th letter. Again, please note that if the dealer receives an amount as a payment or a reimbursement from any other source for the loaning/renting of the automobile, that amount would be subject to Automobile Renting Occupation and Use Tax.

With respect to Example B (October 29 letter):

Please see our answer to Example B from your earlier August 30th letter. This example does reference the possibility of an additional charge to the customer that can be used to reduce the dealer's costs in providing such a loaner vehicle.

Generally, if the dealer merely increases his selling price of the vehicle to cover his unreimbursed loaner vehicle costs, the entire increased selling price is subject to Retailers' Occupation Tax liability. It makes no difference in respect to the dealer's Retailers' Occupation Tax liability that the dealer has placed part of the selling price into a reserve account to support that dealer's service loaner program. We do not believe, however, that the increased amount of the selling price would be subject to Automobile Renting Occupation and Use Tax when all or part of those funds are removed from the reserve account and applied to the loaner vehicle costs. These funds represent part of the selling price of the vehicles and do not represent charges made by dealers to customers specifically for renting automobiles.

However, if a separate charge (not included in the selling price of the vehicle) is made up front to the customer specifically for the use of a loaner vehicle, that charge will be subject to Automobile Renting Occupation and Use Tax liability at the time the dealer provides the loaner vehicle to the customer.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Enc.